IN THE HIGH COURT OF JUDICATURE ANDHRA PRADESH AT HYDERABAD

WEDNESDAY THE TWENTYEIGHT DAY OF OCTOBER
TWO THOUSAND AND NINE

PRESENT

THE HONOURABLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL No. 3 5 1 OF 2004

Between:

The Land Acquisition Officer,
Hyderabad Urban Development Authority,
Begumpet, Hyderabad & Anr. …. Appellants

V/s.

M. Sowbhagyamma (died) w/o late Venkataramayya,
Represented by GPA Holder,
Sri V.Buchaiah Chowdary s/o V.Ammaiah
& 3-Ors. ….
Respondents

Counsel for the Appellant: Sri VTM Prasad

Counsel for the Respondents: Sri V. Narsimha Goud
Govt.Pleader for Labour

THE HONOURABLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL No. 3 5 1 OF 2004

J U D G M E N T : (Per the Hon'ble Smt. Justice T. Meenakumari)

This writ appeal is filed against order dated 24-102003 passed in WP.No. 22899 of 1994 by the learned single Judge, whereby the learned single Judge while allowing the main writ petition observed that the acquired land of the petitioners now forms part of inner ring road, which has already come into existence and that the writ petitioners cannot be put back into possession of the land, therefore, the learned single Judge directed the Land Acquisition Officer to acquire the land of writ petitioners in an extent of 1100 sq.yards comprised in survey No. 64 of Mansoorabad village of Hyderabad East (Saroornagar Mandal) Ranga Reddy district by issuing notification under section 4 (1) of the Land Acquisition Act once again afresh and pass award within six months from the date of receipt of the said order.

2. The facts leading to the filing of this writ appeal can be summarized as follows:

It is stated that the Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad, acquired an extent of Ac: 14-16 guntas of land comprised in survey Nos. 63, 64, 66/U, 66/7, 66/12, 66/14, 67 and 68 of Mansoorabad village, Hyderabad East, Ranga Reddy district belonging to several persons, for the purpose of formation of Inner Ring Road from Tarnaka to Uppal Junction to join National Highway No. 9. It is stated that the writ petitioners own three plots bearing Nos. 39, 49 and 50 in an extent of 1100 sq.yards situated in survey Nos. 64. Before issuance of Notification under section 4 (1) of the Land Acquisition Act, 1894 (for brevity 'the Act') on 18-5-1978, the Land Acquisition Officer took possession of the acquired land on 06-11-1977. Thereafter, enquiry under section 5-A of the Act was conducted on

05-6-1978 and declaration under section 6 of the Act was made on 14-6-1979. It is further stated that when proceedings under sections 9 and 10 of the Act were initiated and notices dated 17-9-1979 issued, one Smt.G.Veena Devi and three others, who own an extent of Ac: 2-26 guntas of land in survey No.64 filed WP.No. 6625 of 1979 questioning the notices before this court and this court by an order dated 10-10-1979 passed in WPMP.No. 8948 of 1979 stayed all further proceedings pursuant to the said notices. Subsequently, by order dated 15-7-1982, WP.No. 6625 of 1979 was dismissed as having become infructuous. It is also stated that during the pendency of the said writ petition, save to the extent of the land covered by survey No. 64, in respect whereof there was stay granted by this court, the Land Acquisition Officer completed the award proceedings. Though the writ petitioners own three plots in an extent of 1100 sq.yards of land in survey No. 64, they have not questioned the land acquisition proceedings and there was no stay in respect of the said land. The Land Acquisition Officer, however, has not passed any award in respect of the land of the writ petitioners. It is also stated that as per the amended provisions of the Land Acquisition Act, 1984 (for brevity 'the amended Act') especially the provisions of 11-A of the Act, the Land Acquisition Officer is required to complete the acquisition proceedings within a period of two years from the date of publication of declaration and inasmuch as no award has been passed by the Land Acquisition Officer within time stipulated in respect of the land of the petitioners despite lapse of twenty years from the date of publication of declaration, the writ petitioners contend that the land acquisition proceedings in respect of their land should be declared to have lapsed. Therefore, the writ petitioners while invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution of India sought to declare the land acquisition proceedings initiated by the respondent and the notification issued

under section 4 (1) of the Act, for acquisition of the land belonging to them, as having lapsed and consequently to direct the respondent to initiate land acquisition proceedings afresh for acquisition of the said land and conclude the same expeditiously and to pay them compensation as per the prevailing market rate.

3. It is the contention of the writ petitioners before the learned single Judge that having regard to the provisions of the amended Act, particularly section 11-A thereof, which came into effect from 24-9-1984 the land acquisition proceedings are required to be completed within two years from the date of publication of declaration and in case where the publication of declaration has been made prior to the commencement of the amended Act, the award shall be made within two years from the date of commencement of the amended Act and period of stay granted by the Court, if any, shall stand excluded from computation of the two years period. It is further contended that in the instant case the publication of declaration was made on 14-6-1979 i.e., much prior to the amended Act coming into force on 24-9-1984 and this court in WP.No.6625 of 1979 filed by Smt.G. Veena Devi and three others passed an order on 10-10-1979 granting stay of the land acquisition proceedings in respect of the land covered by survey No.64 and the said order of stay continued till 15-7-1982, the date on which the said writ petition was dismissed, as having become infructuous and even though the petitioners are not party to the proceedings in WP.No.6625 of 1979 and even if the said period of stay granted by this court in the said writ petition is excluded from computing the period of two years, the respondent was required to exclude the acquisition proceedings by 14-7-1984. Inasmuch as, no award has been passed by the respondent within a period of two years, having regard to the provisions of the amended Act, the land acquisition proceedings should be declared as having lapsed and directions should go to the

Land Acquisition Officer to initiate fresh land acquisition proceedings in respect of the land of the petitioners.

4. On the other hand, in the counter-affidavit filed by the Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad, the allegations made by the writ petitioners were refuted. While reiterating the averments made in the counter, the learned Government Pleader for Land Acquisition averred that even before issuance of notification under section 4(1) of the Act, the Land Acquisition Officer has taken over possession of an extent of Ac:14-16 guntas on 06-11-1977 including the land of the writ petitioners comprised in three plots in an extent of 1100 sq.yards for formation of Inner Ring Road from Tarnaka to Uppal Junction to join National Highway No.9. It is averred that after obtaining approval from the Government, notification under section 4 (1) of the Act was published on 18-5-1978, enquiry under section 5-A of the Act was held on 056-1978 and declaration under section 6 thereof was published on 14-6-1979. Thereafter, notices under section 9 (1) and 10 of the Act were issued on 17-9-1979 and after conducting enquiry on 04-10-1979 award was passed on 29-2-1980. It is the contention of the Land Acquisition Officer that he could not complete the land acquisition proceedings within the period of two years in respect of the land of the writ petitioners, as he was under the bonafide impression that the writ petitioners were also party to the proceedings in WP.No.6625 of 1979, which was ultimately dismissed, as having become infructuous and that there was stay granted by this court even in respect of the land of the writ petitioners comprised in survey No. 64. It is averred that after completion of land acquisition proceedings and passing of the award in respect of the land where there was no stay granted by this Court, compensation was also paid to the land owners, and at their instance, the matter was even referred to the Civil Court, which enhanced the compensation from Rs.9000/- per acre to Rs.51,000/-

per acre. Before the learned single Judge, t is the contention of the learned Government Pleader that had the fact of dismissal of WP.No.6625 of 1979, as having become infructuous, been brought to the notice of the Land Acquisition Officer, the Land Acquisition Officer would have passed the award in respect of the lands of the writ petitioners immediately. It was his contention that when once possession of the land is taken over by the Government, the question of land acquisition proceedings getting lapsed and the question of the Land Acquisition Officer issuing fresh notification for acquisition of the land of the writ petitioners does not arise and more so, when the acquired land stood absolutely vested in the Government without any encumbrance whatsoever. It is further contended that merely because the Land Acquisition Officer has not passed the award within the stipulated time, the whole of the land acquisition proceedings do not get vitiated and indeed, it cannot be a ground to declare the land acquisition proceedings particularly when the Government had also made use of the acquired land. Finally it was contended that the writ petitioners are at liberty to claim benefits in accordance with the provisions of the amended Act but they are not entitled to claim initiation of fresh land acquisition proceedings.

5. On appreciation of the facts and circumstances, upon hearing the arguments of either side and the reliance placed on record, the learned single Judge held that in the present case, the possession of land was admittedly taken on 06-11-1977 even prior to the issuance of Notification under section 4 (1) of the Act on 18-5-1978, the possession of land cannot be said to have been taken in accordance with the provisions of the Land Acquisition Act, 1894 including the provisions of Section 17 (1) thereof. Since the provision of Section 17 (1) of the Act have no application to the facts of the present case, the provisions of section 11-A of the Act, squarely apply, and inasmuch as the award was not passed within the period of two years prescribed in section 11-A of the Act, the entire land

acquisition proceedings must lapse and they are accordingly held to have lapsed. The learned single Judge further observed that the acquired land has since become part and parcel of the inner ring road, which had already come into existence, a direction was given to the Land Acquisition Officer to acquire the land of the petitioners in an extent of 1100 sq.yards comprised in survey No.64 of Mansoorabad village of Hyderabad East (Saroornagar Mandal) Ranga Reddy district by issuing notification under section 4 (1) of the Act, once again afresh and pass award within six months from the date of receipt of a copy of the order and thereby allowed the main writ petition and that the Rule Nisi has been made absolute.

6. The main contention of the learned Government Pleader for Land Acquisition is that since the possession of land has been taken over by the Government, the question of lapse of proceedings would not arise and the question of Land Acquisition Officer issuing fresh notification for acquisition of the land of the writ petitioners does not arise and more so when the acquired land stood absolutely vested in the Government without any encumbrance whatsoever. He further seeks to contend that the learned single Judge ought to have seen that the award in respect of the subject land was passed on 17-9-2003 and when once award has been passed, writ petition is not maintainable, challenging any proceedings thereunder and the writ petitioners did not challenge the award dated 17-9-2003. He further contended that the learned single Judge ought to have seen that the land having vested in the Government absolutely free from all encumbrances and as per the Legislative mandate contained in section 127 (1) and award passed, issuance of further notification under section 4 (1) and section 6 will be a futile, meaningless and superfluous exercise. Moreover, the notification under section 4(1) of the Act is meant to initiate or set in motion the proceedings culminating in the vesting of land with the Government even before

the award is passed, in case section 17 (1) applies and after the award passed in case the acquisition is dehors Section 17. That being the case, the learned single Judge ought not have directed the Land Acquisition Officer to issue fresh notification and direction to pass an award, as if the acquisition did not take a start when admittedly award has been passed on 17-8-2003. The learned Government Pleader further contended that the writ petitioners approached this court in the year 1994 challenging the acquisition proceedings pertaining to the year 1984 and the writ petitioners are not entitled for the relief prayed for therein on the ground of inordinate delay of more than ten years in approaching this court and the learned single Judge committed a serious error in directing the Land Acquisition Officer to acquire the subject land by issuing notification afresh and to pass award when admittedly award has already been passed on 17-09-2003 by taking the market value of the land at the date of the publication of notification under section 4 (1) as per section 23 of the Land Acquisition Act.

7. The learned single Judge after hearing both parties have held that possession of the land was taken on 06-11-1977 even before notification under section 4 (1) of the Act was issued on 18-5-1978. But it is not the case of the Land Acquisition Officer that they have acquired the land by invoking the special powers having regard to the urgency after following the prescribed procedure as contemplated under section 17 (1) of the Act. Be that as it may, had the Land Acquisition Officer taken possession of the land invoking any of the urgencies mentioned in section 17 (1) of the Act, he would been justified in contending that once possession of the acquired land is taken over by the Government, the same shall stand vested in the Government free from all encumbrances but that is not the case before this Court. In the present case on hand, the possession of the land was taken even before issuance of notification under section 4

(1) of the Act, and none of the requirements of Section 17 (1) of the Act, have been satisfied. Moreover, the possession of land was admittedly taken on 06-11-1977 i.e., prior to the issuance of notification under section 4 (1) of the Act on 18-5-1978, the possession of land cannot be said to have been taken in accordance with the Land Acquisition Act, 1894 including the provisions of section 17 (1) thereof. Since the provisions of section 17 (1) of the Act, have no application to the facts of the present case, the provisions of section 11-A of the Act, aptly apply, and inasmuch as the award was not passed within the period of two years as prescribed in section 11-A of the Act, the learned single Judge rightly held that the land acquisition proceedings must lapse and are accordingly held to have lapsed. Inasmuch as the entire land acquisition proceedings have lapsed, the acquired land should revert to the petitioners. But the acquired land of the respondents-petitioners now forms part and parcel of Inner Ring Road, which has already come into existence and in that view of the matter, the respondents-petitioners cannot be put back into possession of the aforesaid land. The learned single Judge therefore held that any direction to the Land Acquisition Officer to handover possession of the acquired land to the respondents-petitioners, at this stage, would not be in the interest of the larger general public. Therefore, we are in agreement with the findings of the learned single Judge in directing the Land Acquisition Officer to acquire the land of the respondents-petitioners in an extent of 1100 sq.yards comprised in survey No.64 of Mansoorabad village of Hyderabad East (Saroornagar Mandal), Ranga Reddy district by issuing notification under section 4(1) of the Act and pass award within a period of six months from the date of receipt of a copy of this judgment.

8. It is also brought to our notice by the learned counsel that at one stage this writ appeal was dismissed on 10-3-2004 on merits.

While the Hyderabad Urban Development Authority filed WAMP.No. 3477 of 2004 in WA.No. 351 of 2004 to recall the order dated 10-3-2004 passed in WA.No.351 of 2004 and the order was recalled and the matter was posted for fresh hearing and accordingly the matter has come before us.

9. During the course of arguments it has been brought to our notice the material enclosed to the writ appeal goes to show that the Government has implemented the order passed by the learned single Judge while issuing notification under section 4 (1) of the Act and published in the Gazette on 31-5-2004 and also followed the requirement of section 6 of the Act in acquiring the land of the respondents-petitioners in an extent of 1100 sq.yards comprised in survey No.64 of Mansoorabad village of Hyderabad East (Saroornagar Mandal), Ranga Reddy district belonging to the present respondents-petitioners i.e., unofficial respondents and while referring to the orders passed by the learned single Judge in WP.No.22899 of 1994, dated24-10-2003 and also followed by section 6 of the Act, as the Government has implemented the order passed by the learned single by issuing statutory notification following section 6 even though the arguments were sought by the official respondents, we are not inclined to interfere with the order of the learned single Judge and we are not agreeable to accept the contentions raised by the learned Government Pleader for Land Acquisition, as the award was not passed for a period of 24 years, therefore, the learned single Judge is perfectly right in upholding the contentions of the respondents-petitioners in directing the Land Acquisition Officer to acquire the land of the respondents-petitioners in an extent of 1100 sq.yards comprised in survey No.64 of Mansoorabad village of Hyderabad East (Saroornagar Mandal), Ranga Reddy district by issuing notification under section 4(1) of the Act, which has not been implemented by the Land Acquisition Officer

within the stipulated period.

10. Under the above facts and circumstances, we are not inclined to interfere with the order dated 24-10-2003 passed in WP.No.22899 of 1994 by the learned single Judge and we are in full agreement with the findings of the learned single Judge. The writ appeal fails and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

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JUSTICE T. MEENA KUMARI

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JUSTICE SANJAY KUMAR

28-X-2009.
I s L

THE HONOURABLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL No. 3 5 1 OF 2004

Judgment of the Division Bench delivered by
the Hon'ble Smt. Justice T. Meenakumari)

Circulation Entry No.

Date: 28-X-2009

COMPUTER No. 43

Court Master: I s L